Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	
2002 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	MB Docket No. 02-277
Cross-Ownership of Broadcast Stations and Newspapers	MM Docket No. 01-235
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	MMDocketNo.01-317
Definition of Radio Markets	MM Docket No. 00-244

REPLY COMMENTS OF TRIBUNE COMPANY

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SUMMARY

Tribune opposes the Newspaper Rule in any fonn and responds to commenting parties that would retain the rule on several points. First, newspapers, with necvsgathering resources exponentially greater than those of local television or radio stations, deliver exactly the type of original, high-quality, in-depth reporting that supporters ofthe Newspaper Rule desire. Second, commenting parties favoring retention of the rule have provided no evidence that commonly owned local newspapers and broadcast stations share editorial bias, reduce news coverage, or otherwise limit viewpoint diversity. Instead, access to a sibling's news or other content, like access to a wire service, simply provides additional resources for news directors and editors. Third, journalistic integrity will not be harmed by repeal of the Newspaper Rule, contrary to some commenters' assertions. Fourth; commenters' concerns about corporate absentee owners causing a decrease in journalistic quality arc inisguided and, in any event, do not justify the Newspaper Rule Fifth, contrary to the assertion that commonly-owned newspapers and broadcast stations deplete viewpoint diversity, it is the Newspaper Rule that discourages new voices in the marketplace, a contrast demonstrated by Tribune's experiences in South Florida and Chicago.

The Newspaper Rule is. and always has been, ineffective in promoting diversity of viewpoint because it is the marketplace that determines the quantity and mix of media voices available at any given point. Dean Baker's Report on the FCC Ownership Working Group Studies is faulty on several points and fails to undermine the conclusion that, in general, the Working Group studies support repeal ofthe Newspaper Rule.

Under the Biennial Review standard. the Newspaper Rule must be repealed because, as even supporters of the Rule concede. "if the Commission finds a rule is no longer in the public interest, it should repeal or modify the rule." (Comments of United Church of Christ, et al, at 20) As demonstrated again and again over the 28-year long history ofthe Newspaper Rule, this regulation is unsupported by the weight of empirical evidence, unfairly singles out newspaper owners, and does not further the public interest goal of fostering diversity

Finally, the record does not support a reformulation of the Newspaper Rule because none of the studies in the record, including comments supporting retention of the rule, provide guidance to the Commission about how to tailor a modified rule, nor do they explain how a modified rule would advance the Commission's goals

As in 1975 when the Commission adopted the Newspaper Rule, the facts today demonstrate that the public benefits when newspaper publishers have the opportunity to own local radio and television stations. Fourteen studies by the Commission and an impressive array of comments have not changed a thing: common ownership means more news. more local coverage – and no facts in the record suggest commonly-owned media deplete viewpoint diversity. This rule should be repealed.

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REPLY COMMENTS **OF TRIBUNE** COMPANY

Tribune Company ("Tribune") submits the following Reply Comments in regard to the Notice of Proposed Rulemaking ("Notice") issued by the Federal Communications Commission ("FCC" or "Commission") reviewing, *inter alia*, the daily newspaper-broadcast common ownership tule ("Rule," "Newspaper Rule" *or* "Cross-Ownership Rule"), codified at 47 C.F.R. §73.3555(d)(2000), and the other rules set forth above. These Reply Comments focus on the Newspaper Rule, rather than the other regulations at issue in this omnibus proceeding, because it is the Newspaper Rule that has the most extensive record, is most ripe for repeal, and has the most detrimental impact on local news, information and public discourse.

I. Introduction.

The comments filed in opposition to repeal of the Newspaper Rule contain the same fallacious predictions of apocalypse that led to the creation of the Rule 28 years ago. They start from the unsupported and dubious premise that regulation is necessary – most notably, it seems, because the Rule exists - and then attempt to identify a justification. Citing only isolated anecdotes, supporters of the

Newspaper Rule cannot draw a causal link between cross-ownership and the suppression of media voices. Stripped of hyperbole, the comments are modem versions of the regulatory supposition that first surfaced in 1975 and do not meet the burdens of proof required by the Biennial Review Standard.'

These tired refrains are no match for the facts: The ownership quarantine imposed for a quarter century on newspaper publishers has limited, rather than expanded, the diversity of broadcast voices, diversity of broadcast station ownership, pervasiveness of news programming and richness of local news content sought by the original proponents of the Rule. In today's world, elimination of the Newspaper Rule and its prohibition on newspaper participation in local television and radio will do far more to further these goals than retaining the Rule in any form.

II. Common ownership promotes quality journalism and does not impede viewpoint diversity.

A. The Rule's prohibition on common ownership reduces the quantity and quality of local news and public interest programming.

Supporters of the Newspaper Rule do not dispute that the quality of broadcast journalism improves through broadcastlnewspaper combinations.' The empirical evidence shows television stations owned by newspaper publishers produce more news and win more awards for news coverage than do other stations.' In fact, newspapers are the antidote for the "vicious circle" opponents of deregulation allege is occurring in local television news – little consumer interest in longer, more complicated stones "leaves only a handful of reporters ... to cover local government or politics, business, education, environment or social issues that most affect people living in the communities they serve."[4]

Newspapers, with newsgathering resources exponentially greater than those of local television stations, deliver exactly the type of original reporting supporters of the Newspaper Rule desire. For example, the *Chicago **Tribune*** maintains a staff of650 reporters and photographers to cover breaking news and produce time-consuming investigative reports. Chicago's WGN-TV maintains a staff of ***25***

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[1] The Court of Appeals for the District of Columbia Circuit stated the Biennial Review Standard "carries with it a presumption in favor ofrepealing or modifying the ownership rules." ***Fox** Television Stations, Inc. v. FCC*, **280** F.3d 1027, 1048 (D.C.Cir. 2002)("*Fox **Television"), opinion** modified on rehearing*, 293 F.3d *537* (D.C.Cir. 2002).

[2] *See, e.g* , Comments of Consumers Union. Consumer Federation of America Civil Rights Forum, Center for Digital Democracy, Leadership Conference on Civil Rights and Media Access Project (collectively, "Consumers Union, et al.") at **64** ("we do not mean to suggest that there is anything wrong with Tribune Company's behavior. On the contrary, economic synergies may certainly help Tribune improve the quality of its media products.").

[3] Thomas C. Spavins, et al., *The Measurement of Local Television News and Public **Affairs** Progrnms* (FCC Media Ownership Working Group Report #7); Tribune Comments, Jan. 2003, at 14.

[4] Comments of National Association of Hispanic Journalists, 2003, at 5.

reporters who work a primarily breaking news schedule. However, because WGN can tap Into the newsgathering resources of the *Chicago Tribune,* it can provide greater and deeper coverage to those ChicagoLand residents who prefer to get their news via television. The combination of these newsgathering operations produces superior broadcast journalism as chronicled in Tribune's 2001 Comments.[5]

Nonetheless, supporters of the Newspaper Rule advocate denying broadcast stations access to the wealth of newsgathering assets resident in newspapers and will sacrifice quality in broadcast journalism for a theoretical gain in viewpoint diversity[6] Both the sacrifice and the belief in a theoretical gain are misguided

B. Common ownership does not bias newsroom viewpoints.

Some have termed the Newspaper Rule a remedy in search of an ailment. The comments of the Communications Workers of America ("CWA"), which represents more than 100,000 journalists, technicians, printers and customer service representatives in the media industry, unwittingly provide an example of that sentiment. One would expect that if anyone could document evidence of the perils of cross-ownership beyond mere conjecture, it would be a labor union representing newsroom workers. Yet after more than SO years of newspaper/broadcast combinations operating in markets across the country, the comments of CWA reveal only the following illustrations – none of which offer justification for retention of the Newspaper Rule:

- *In* Milwaukee, where the Milwaukee *Journal Sentinel,* WTMJ-TV, WTMJ-AM and WKTI-FM are owned by Journal Communications, **CWA** alleges the *Journal Sentinel* hosts a remote WTMJ camera in the newsroom and cross-promotes stories with WTMJ. Further, WTMJ's meteorologist provides a weather column for the *Journal Sentinel* and a business reporter from the newspaper has appeared on WTMJ.

- In Phoenix, *The Arizona* ***Republic*** and KPNX-TV share staff and cross-promote stones in the newspaper and on television. Both also contribute to the Web site, azcentral.com.

- In Youngstown, Ohio, *The Vindicator* and WFMJ-TV do not commingle staff, but one journalist offered a tale about an editor requesting coverage of the co-owned television station

[5] *See* Comments of Tribune Company, 2001, at **46-48** (Dec. *3,* 2001, MM Docket No. 01-235).

[6] The Comments of the Communications Workers of America, et al., argue "whatever other benefits co-ownership may produce for the parent company or even to the community, there is a clear constraint of media viewpoint." Comments of Communications Workers of America, The Newspaper Guild/CWA, The National Association of Broadcast Employees and Technicians/CWA; Printing, Publishing, and Media Workers Section/CWA (collectively, "CWA") at **34.**

during a successful ratings period and consulted with the reporter after she wrote an unfavorable story about WFMJ.

- In Cincinnati, the *Cincinnati Post* sends its news schedule to its sister station, WCPO-TV, and WCPO reciprocates with a summary of its spot news stones.

- In Canada, Can West Global required its 14 daily newspapers to publish editorials written at corporate headquarters. Can West Global did not own television stations in these markets and this example is not symptomatic of newspaper/broadcasting cross-ownership.'

Interestingly, neither CWA nor the AFL-CIO provides evidence that sharing resources reduces news coverage or creates an absence of competition. In fact, CWA concedes journalists view their television siblings as competitors in cross-owned markets' and provide unfavorable coverage of their sibling media when it is warranted.' What these critics demonstrate is that access to a sibling's newsgathering resources in no way constricts the viewpoint of either medium.

Having access to a sibling medium's content, like access to a wire service, does not subvert diversity, it simply offers additional resources for news directors and editors to better tell their story. CWA and others point to shared news resources as a smoking gun, but ignore that print and broadcast media have been sharing news wires and news bureaus since newspapers were first published in the U.S. more than 200 years ago.'" Newspapers use wire services and content from unaffiliated newspapers every day. Radio stations rely on newspapers as the launch pad for dnve-time news and talk shows and television stations in many markets have partnered with newspapers to bring depth to their news coverage.

The assumption that cross-ownership results in a loss of viewpoint diversity is also premised on the faulty perception that broadcast stations routinely express opinion, either directly or through choices in programming. **As** described in Tribune's January 2003 Comments, this theory falls apart when

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[7] *See also* Comments of American Federation of Labor and Congress of Industrial Organizations, et al., ("AFL-CIO") at 45, **40** ("reporters are required to learn and do jobs outside their primary media, and joint reporting is becoming more common.,.. Newspaper photojournalists are required to carry both still and video cameras.").

[8] Comments of CWA at 34, 36

[9] Comments of CWA at 36.

[10] In fact, news wires were an original example of media synergies, as publishers pooled their resources to obtain international news that would have been cost prohibitive for any single publisher. The Associated Press wire service originated in 1848 to feed news from Europe to six highly competitive New York newspapers. United Press International has been providing content to print, on-line and broadcast journalists for more than 100 years. On a local basis, news bureaus like the City News Bureau in Chicago supported Chicago media operations from 1890 until cost constraints forced it to close in 1999. Having access to a wire service or a sibling media's content does not subvert diversity, it simply offers additional resources for a news director or editor to tell the story,

confronted with reality. First, and most importantly, non-news programming decisions are mostly cost based and market driven. The modicum of opinion a station exercises in choosing what time slots to air *Dawson's* **Creek,** *Who Wants to* **he** a *Millionaire, Moesha, Uga Uga,* or a telecast of Major League Baseball reflects economic considerations far more than any viewpoint bias, as the Chairman of the Commission has recognized." More importantly, such programming decisions are of marginal consequence to the interests of local news and information.

Second, unlike newspapers, television stations rarely editorialize. In the November **2002** elections, for example. none of Tribune's 24 television stations endorsed candidates for elective office. Even in the rare instance where a station expresses an opinion, that opinion is not influenced by common ownership with a newspaper. **As** with all editorial decisions, these decisions are made by the local operators and emphasize local issues and perspectives."

Finally, regulating ownership is ineffective as a means of promoting viewpoint diversity. **As** Chairman Powell notes, "Different owners may have different perspectives, but they probably have more in common as commercial interests than not, for each must compete for the maximum audience share to remain profitable."" That is, most television newscasts will broadcast the major stories in the marketplace because they are trying to reach the broadest possible audience regardless of whether they are owned by a newspaper. The difference with common ownership is that the station has access to more resources and can provide better, more thorough coverage.

C. Common ownership does not affect journalistic integrity.

Media critics commonly decry an alleged erosion of the wall between the business and editorial sides of a newspaper. They claim common ownership will result in the imposition of purportedly

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[11] 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to § 202 of the Telecommunications Act of 1996, 15 FCC Rcd. 11058, 11149 (2000) (separate statement of Commissioner Powell).

[12] Indeed, decisions about content at Tribune media are all made locally and criticism of sister operations and the corporate parent are commonplace. One need only read the *Chicago Tribune* coverage of the notoriously unsuccessful Chicago Cubs to see open criticism of a sister operation. Tribune's newspapers regularly critique the programming on Tribune-owned stations and corporate initiatives are no less immune. Following the merger of Tribune and Times-Minor, the *Los Angeles Times* newspaper columnists lampooned their new corporate parent and criticized their new in-market sibling, KTLA-TV. ***See,*** *e.g.*, Howard Rosenberg, *Mergers Make for Strained Bedfellows*, Los Angeles Times, March 15, 2000, at F1

[13] 1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to § **202** of the Telecommunications Act of 1996, 15 FCC Rcd. 11058, 11149 (2000) (separate statement of Commissioner Powell).

sanitized corporate viewpoints at the expense of independent, quality journalism.[14] To inject such arguments in this proceeding necessarily recognizes a tie between the Newspaper Rule and the regulation of newspapers – a target beyond the Commission's authority or purpose. But even if the Commission were inclined to exceed its authority in this way, supporters of the Newspaper Rule offer no evidence other than anecdote to support this theory

One oft-cited anecdote is the *Los Angeles Times*' agreement to share with the Staples office supply company a newspaper insert reviewing the then-new Staples Center arena in downtown Los Angeles.[15] The undisclosed union between publisher and subject matter violated fundamental principles ofjournalistic ethics. But far from being solely an example of a lapse ofjoumalistic integrity, the Staples anecdote teaches that independent journalism is alive and well and any missteps will be promptly and severely admonished.

The most important part of the Staples affair is what happened after the special section ran in October 1999. Following disclosure by the *Los Angeles Times*' own reporters of its journalistic misstep, the owners and editors of the *Los Angeles Times* were roundly criticized by journalists nationwide. The newsroom of the *Los Angeles Times* revolted in protest and called – in their own newspaper – for the ouster of the publisher and editor. In rcsponse. the publisher authored an open letter of apology in the newspaper and the editor was sacked. Unappeased, the criticism continued until the publisher resigned and the CEO of the parent company, Times Mirror Company, admitted responsibility. Ultimately, amid continuing newsroom discontent, and primarily for reasons beyond this incident, the owners of the *Los Angeles Times* sold their company to Tribune in March 2000.[16]

If one were to believe common ownership begets common viewpoints, it would be expected that Tribune's newspapers would endorse the same political candidate. In the most recent presidential election, however, six of Tribune's daily newspapers endorsed President Bush, three endorsed then-Vice President Gore, two declined to endorse either candidate and two Tribune-owned weekly newspapers endorsed Ralph Nader.

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14 *See, e g.,* Comments of AFL-CIO at 20.

15 *See. eg.,* Comments of AFL-CIO at 20.

16 Similarly, local journalists reacted *to* Can West's attempt to control local editorials from its national headquarters with an acknowledged "firestorm" in which journalists held byline **strikes,** columnists resigned and more than 175 articles were published denouncing the policy. Comments of **CWA** at 38.

Those who favor the Newspaper Rule are also said to fear the power of a single newspaper publisher with control over both a print publication and a portion of the airwaves." But adopting policy based on such fears, absent concrete or repealed patterns ofbehavior across a significant number of owners is no basis for adopting and continuing to maintain a newspaper cross-ownership rule. Moreover, as long as there is a diverse marketplace of stations, the Commission needn't worry about individual owners. It may be troubling if one newspaper publisher imposes inappropriate views on a commonly-owned broadcast station in a marketplace, but it is not a solid basis for regulation especially since there are so many other reading or viewing choices available to consumers.

The primary reason common ownership does not threaten journalistic integrity is plain to anyone with media experience. Journalists, by their nature, are critical and independent. Any attempt by ownership to influence the slant ofpolitical news will be resisted, reviled and ultimately revealed by journalists. The remaining anecdotes purporting to imply the opposite are nothing more than isolated hearsay masquerading as fact.[18]

D. Supporters of the Newspaper Rule assail corporate absentee owners – a criticism that, even if it were true, is unrelated to local ownership, diversity of ownership or common ownership of a newspaper and TV station.

Those favoring retention of the Newspaper Rule believe the quality of broadcast journalism is harmed by corporate ownership ofbroadcast stations." They cite a handful of anecdotes about corporate owners allegedly exerting influence over news coverage and the reduction of news budgets as evidence that corporate ownership retards responsible journalism. Like the Newspaper Rule itself, the conclusions drawn are overbroad and rely on theory and conjecture rather than evidence.[20] Importantly, they do not,

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[17] ***See,*** e g.,Nicholas Lemann, ***The*** *Chairman'* ***He's rhe*** *other* ***Powell,*** *and no* ***one*** *is* ***sure*** *what* ***he's*** *up to*, The New Yorker, October 7, **2002,** at **48** ("According to an oft-told F.C.C. World anecdote, President Clinton once blocked an attempt to allow television stations to buy daily newspapers in the same city because, he said, if the so-and-so who owned the anti-Clinton Little Rock *Democrat-Gazette* had owned the leading TV station in Little Rock, too, Clinton would never have become President.").

[18] *See, e.g.*, Comments of AFL-CIO at 21-22 (one editor in South Carolina who "a few years ago" disagreed with his publisher about local coverage; one Gannett office memo stating "the publisher is responsible for the entire newspaper.").

[19] ***See,*** *e.g.*, Comments of CWA at 30.

[20] For example, CWA relies on a study entitled "The Slant ***of*** the News: How Editorial Endorsements Influence Campaign Coverage and Citizen's Views of Candidates" which concludes newspaper editors influence how their papers cover Senate campaigns. This study concludes newspaper coverage ofpolitical campaigns is distorted by the editors' own personal bias — as made known through candidate endorsements. This analysis is, ofcourse, *irrelevant* and unrelated to the *ownership* of the newspaper. Anyone *with* newsroom experience understands *that it* is a rare event for a publisher or corporate owner of a newspaper to appear in a newsroom let alone express **an** opinion as to the content or structure of *a* news story. In fact, ihose commenters who bemoan the alleged corporate

and cannot, support their allegations that broadcasting/newspaper combinations produce lower quality news and public interest coverage because the factual record requires the opposite conclusion. In truth, the comments assailing corporate absentee owners take issue with the positions represented by the corporations -- the editorial content of the publication or broadcast. They assail speech, content and business decisions by news entities that happen to be owned by corporations. But they do not claim this problem is related to whether the corporate entity also owns a newspaper. As such, they have no place in this proceeding as a challenge to the Newspaper Rule.

For example, the AFL-CIO decries the refusal of a station to broadcast advertising paid for by a labor organization.[21] The allegation attacks corporate ownership and has nothing *to* do with whether a station is commonly owned with a newspaper. Mom and pop broadcasters, station owners who may qualify as "diverse" and other stations may all, on occasion, turn down advertising.[22] This is not an attack on common ownership, it's an attack on free speech and licensee discretion. Corporate owners may be local or non-local, they may be diverse or not, they may be affiliated with a newspaper or not. But a blanket ban on corporate ownership is unconstitutional. unjustified and in no way related to the preservation of local content.

If the Rule's supporters truly want to foster local ownership and local voices on the airwaves, then let the newspaper speak in a broadcast voice. Few are better equipped to discuss local issues in Hartford, Connecticut, for example, than the ***Hartford** Courant* – America's oldest newspaper in continuous publication, published in Hartford since 1764. Denied by the Commission the opportunity to speak in a broadcast voice, the *Courant* would sit idly and watch as entities from New York and beyond – with no connection *to* the community -- decide what programming *is* available to television viewers in Hartford.''

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allegiance to the bottom line do nor explain how or why a corporate owner with professed financial motives would jettison those ideals and risk the integrity of the news media's independence simply to influencea single news story or news coverage Comments of CWA at 44

[21] *See* Comments of AFL-CIO at 24

[22] Comcast, a cable operator, recently turned down an anti-war ad which a sponsor wanted to distribute on CNN during President Bush's State of the Union speech. *See* John Curran, *Conrcast **refuses nnti-war** ads during State* of *Union*. Newsday (January 28, 2003), *at* http://www.newsday.com/news/local/wire/ny-bc-nj--anti-warads0128jan28,0,7260813.story?coll=n.

[23] Tribune has before the Commission a Request for Waiver seeking relief from the Newspaper Rule in Hartford. ***See** In **Re Application** of **Counterpoint** Communications. Inc., **Transferor**, and **Tribune** Television Company, Transferee*, Request for Waiver (filed August 6, 2002).

The AFL-CIO also cites the CBS-owned television station in Chicago as an example of the perils of common ownership. The station, it says, is "scrambling" to partner with the Chicago Sun-Times to have access to that newspaper's content so the station can compete with Tribune's WGN-TV.[24] Far from supporting the Rule, this demonstrates that WGN has set a standard for reporting that is the envy of even a mighty network. Contrary to the AFL-CIO contention that this reduces the amount of diverse content available in the market, the partnership actually *increases* the quality of local news coverage on the air. There are many, many broadcast outlets in Chicago and no shortage of diverse viewpoints. Letting the *Chicago Tribune* and *Chicago Sun-Tunes* bring to the airwaves their vast newsgathering forces and deep commitment to local news only enhances the quality of available local news and information.

Nor need the Commission worry about the impact of combinations. Regrettably, most cities in America have fewer major metropolitan daily newspapers today than 25 years ago. In a city with only one newspaper, there can be only one newspaper-broadcast combination. Such a combination offers little risk of harm to viewpoint diversity in a marketplace that includes so many choices. Even if one posits that ABC would not cover Disney fairly, other stations will. That is what competition is all about.[25]

E. The Newspaper Rule discourages new vuices in the marketplace.

Those favoring retention of the Newspaper Rule desire robust and separate newsgathering operations to produce a diverse marketplace of ideas." They wish for armies of reporters and limitless newsroom budgets to cover local, national and international stories. While no media company would likely deny the potential public interest in such an idealistic world, the realities ofnewsroom economics interfere. The expense of producing television news drives competitors toward joint productions and exposes the perverse impact the Newspaper Rule has on competition and diversity."

In South Florida, for example, when Tribune acquired Miami television station WBZL (then WDZL) in 1996 as part of the Renaissance station group, the station was the seventh-rated television

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[24] *See* Comments of AFL-CIO at 50.

[25] Finally, to the extent there is a fear of advertisers controlling content, larger owners have a greater ability to stand up to large advertisers. ***See.*** *e.g.*, Comments of AFL-CIO at 23-24. This is part of the answer to allegations that major advertisers could control the content in local newspapers. A small newspaper, dependent on a handful of local advertisers for business, is far more likely to succumb to advertiser pressure than is a larger paper with myriad sources of advertising revenue.

[26] Comments of CWA at 39.

[27] Three of the big four networks cooperate in marketing their breaking news to affiliates. "News Service Pools Clips; Fox, CBS, ABC Form Network News Service," *Electronic Media,* Jan. 3, 2000, pg. 1

station in the market and carried no local news. Tribune asked for a waiver of the Newspaper Rule due to its ownership of the *Sun-Sentinel* newspaper and was given temporary permission to acquire the station. However, as a condition to the approval, Tribune agreed to operate the station and the newspaper separately.

Tribune is committed to local news, but given the enormous start-up expense of a new local newscast – estimated at approximately $1.5 to $2 million – and without access to the *Sun-Sentinel*'s newsgathering assets, WBZL contracted with NBC-owned WTVJ to purchase a newscast rather than produce its own. WBZL's 30-minute, 10 p.m. newscast features on-air talent employed by, and stories generated by, WTVJ's news department. Under the terms of the contract, WTVJ primarily controlled production of the broadcast. Instead of launching a new voice in the market, rich in local news content supported by the *Sun-Sentinel,* WBZL aired a newscast produced and staffed by a competitor who already had a broadcast voice in the market via its own news programs on WTVJ.[28]

The difficulty faced by WBZL in launching local news is in no way unique. While practically all television stations affiliated with the four major networks have news departments, the great majority of other television stations do not. One study found while 98% of ABC, NBC and CBS affiliated stations had news departments, only 36% of stations not affiliated with one of these three networks did.[29] Producing local news is expensive. For independent stations to produce news typically requires more resources than are available to stations not affiliated with ABC, NBC, or CBS. Common ownership offers a solution.

An example of how cross-ownership launches new voices can be seen in Chicago, where Tribune has owned the cross-media combination of *Chicago Tribune,* WGN-TV and WGN-AM for 54 years. Using the resources of the *Chicago Tribune* and the broadcasting expertise of WGN-TV, Tribune in 1992 launched a 24-hour all news local cable channel known as CLTV – ChicagoLand Television News. CLTV offers some 1.6 million Chicago DMA cable television viewers their own around-the-clock news service, expanding the market's broadcast news dialogue with a new voice.

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[28] The Commission finally removed the "hold-separate" bar on August 9, 2002. ***See*** *Tribune Company, Petition for Removal of Condition on Grant of Application for Transfer of Control of Television Station WBZL(TV), Miami, Florida*, FCC File No. BTCCT-960801LJ (Aug. 9, 2002). WBZL remains under contract with WTVJ to air newscasts.

[29] Vernon Stone, *News Operations at U.S. TV Stations*, Missouri School of Journalism (Updated 2001) at Table I, *or* http://www.missouri.edu/~jourvs/gtvops.html.

III. Consumers do substitute between media, but even if they did not, sound policy must reilect the *availability* of multiple media sources, rather than consumer preferences.

Many of those opposed to changes in the Newspaper Rule suggest a lack of consumer substitution between various media demonstrates the need to maintain the Rule. This misses the point: Where there is access to multiple sources of news, information and programming in the marketplace, the diversity goals of the Commission and the public are satisfied – regardless of whether consumers actually substitute one source for another

A. Consumers today have access to multiple sources of news, information and programming. Their choice not to use all available sources does not justify regulation.

Dean Raker's "Critique of the FCC Studies on Media Ownership" may have inadvertently hit on the nub of the issue. Baker says, "concentration in one type of medium is of less concern if consumers can readily move to another medium. In other words, it would be of little concern if there was heavy concentration in television ownership, if consumers viewed the Internet as an equally good source of news and entertainment."[30] While Baker goes on to criticize the Commission's studies for failing to show consumers in fact use other media as substitutes, his criticism falls short of addressing the point. The data clearly show consumers can readily substitute between media and neither Baker nor any other source refutes this. In Baker's own words, the availability of so many sources makes concentration of ownership "of little concern."

The Commission cannot mandate what the consumer will watch from among available channels Consumers today have access to multiple sources of news, information and entertainment. Some enjoy news, others like sports programming, others like situation comedies, reality TV or game shows. For purposes ofregulatory policy, it matters little how many consumers actually use the additional information sources. It is the availability of diverse programming that has always been the mantra of those who support the need for regulation.

[30] Dean Baker, *Democracy Unhinged, **More** Media Concentration Means Less Public Discourse: **A** Critique of the FCC Studies on Media **Ownership,*** **at** 9 (the "Baker Report") (emphasis added); *see also* Comments **of** AFL-CIO at 10.

B. Internet, cable, etc., are viable sources **of** news – not **just** recycled content.

Some of those opposing the Newspaper Rule argue viable sources of news such as cable and the Internet should not be counted since they offer mostly recycled content from other, mainstream news providers. Hogwash. The Internet has millions of pages of news and information – ***far*** more than any newspaper or television station on a given day. News sites that belong to newspapers often display breaking news as it happens – far more immediate and convenient to some than waiting for the next morning's newspaper. More importantly, the Internet and cable offer original news programming – content created by and for a new audience.

The "public interest" isn't just about local news. lust as former Speaker of the **U.S.** House Thomas P. "Tip" O'Neill famously observed, "All politics is local," so, too, is all news local. Our country is deciding whether to go to war. how to defend itself against terrorism, learning about abuses by heads of global businesses, deciding what should be done to remedy the national economy, who should be the next President, etc. The difference between a national and a local story on these issues often blurs. National cable channels, national news magazines and national newspapers, which have begun or greatly expanded since the Newspaper Rule was created, all contribute significantly to the debate on these issues and should not be overlooked even if they don't routinely report arrests at the local police precinct or report **on** the local school board meeting.

IV. The **FCC studies support** elimination ***of*** the **Rule.**

In their attempts to criticize modem media and support the Rule, many commenters fall woefully short of their burden to provide even a basic rationale for the Rule. **As** one commenter quotes, the Commission should weigh "the significant consequences of drafting policy based on incomplete information and indeterminate analysis."" Tribune agrees. The problem in this case is the policy itself – the Newspaper Rule -- adopted 28 years ago based on incomplete information and indeterminate analysis. Absent a justification, the Newspaper Rule must be repealed.

The 14 studies undertaken by the Commission support repeal and offer no justification for continued regulation. Those who support rhe Newspaper Rule criticize discrete portions of the studies but offer no evidence of their own to refute the findings and provide no contrary evidentiary conclusions.[32]

[31] Comments of the Information Policy Institute *at* 32

[32] While some *commenters might* justifiably assert they cannot absorb the cost of producing empirical evidence in support of the Newspaper Rule, **clearly** that is not true of all commenters. Nevertheless, no new evidence is produced to support the Rule.

Critics contend the FCC studies are flawed because they fail to analyze market share, indicate media outlet ownership and discuss change over time in both these areas.'' Of course, this is exactly the evidence provided in Tribune's earlier comments regarding the Newspaper Rule.[34] The fact AFL-CIO and others have no evidence to refute this data -- after more than a quarter century ofexperience and at least three years of opportunity lo comment before the Commission -- demonstrates the lack ofevidence on this point to support the Rule. Moreover, those who would support the Rule offer no evidence the Rule has accomplished what it set out to do: No study shows a connection between the Rule and more diverse programming, more diverse ownership or more diverse viewpoints.

A. The main "critique" **of** the FCC studies fails **to** undermine their conclusions.

Many commenters refer to the "Critique of the FCC Studies on Media Ownership," submitted by the AFL-CIO and prepared by Dean Baker, co-director of the Center for Economic &Policy Research." Because it is cited so often, and purports to be an independent, scholarly analysis of the studies commissioned by the FCC, it merits a brief reply.

The Baker Report provides no new data or evidence. Thus, it does nothing to advance the burden of demonstrating the Commission's ownership rules remain "necessary in the public interest." The Baker report questions the methodology used in the Commission's studies but offers no evidence that another approach would yield different conclusions.

1. Study **#1:** Grnwth in media **outlets.**

Study #1[36] chronicles the huge growth in the number of media outlets from 1960-2000. Finding a dark cloud behind this silver lining, the Baker Report notes the *rate of increase* has slowed in the past 20 years.[37] Even more ominous, the Report states, is that the number of educational television stations has

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[33] *See* Comments of AFL-CIO at 7.

[34] *See* Comments of Tribune Company, 2001, at 12-58

[35] Baker Report, *supra.* Far from being the dispassionate academic, Baker and the Center for Economic & Policy Research regularly advocate positions on public policy issues. ***See*** Baker Report at 28. Baker concluded a recent essay on the Bush administration's economic policy saying, "The bottom line **is** that in President Bush's America, the only genuinely safe investment is a contribution to his re-election campaign. Stopping this assault on the nation'swell-being will not he easy, hut the first step is recognizing that the guy in the White House is running a scam for his rich friends." Dean Baker, *Attack of the Clowns. **The** Real Bush is Back,* Center for Economic & Policy Research, May 23,2002, *at* http://www.cepr.net/columns/baker/attack-of-the-clowns.htm.

[36] Scott Roberts, et al, ***A** Comparison of Media Outlets and Owners for **Ten** Selected Markers (1960, 1980,2000)* (FCC Media Ownership Working Group Report #1), September 2002 ("Study #1").

[37] Baker Report at 15-17.

grown more slowly," purportedly demonstrating that "Clearly education has become a less important function of broadcast television in the last decade."[38] The Report notes Study #12 does not explain the reason for the slower growth in the number of educational stations, but nevertheless concludes "relaxed regulation presumably played a role."[39]

Broadcast stations compose the huge majority of outlets measured in Study #1. Markets with dozens of radio and television stations often have only one or two newspapers. The cable operator is counted as one outlet as is a DBS provider.[41] The obvious explanation for the slowing growth in broadcast outlets in recent decades is that the vast majority of the noncommercial and commercial stations in the Commission's Table of Allotments have been applied for, built and are now in operation. Growth in the past two decades – not measured by these Studies – has occurred in services delivered by cable programmers, including multiple public access, educational and governmental ("PEG") channels required by nearly all cable franchise agreements, and services such as C-SPAN, as well as dozens of cable networks that provide significant amounts of "educational" programming such as Discovery, TLC, The History Channel, HGTV, A&E, Bravo, and Nickelodeon. The Baker Report's fears are ill-founded.

The Baker Report criticizes Study #1 for counting the skyrocketing number of media outlets but failing to measure and compare their market shares. "If a small number of outlets are able to dominate the market, the availability of a large number of very small outlets could mean little to either consumers or advertisers."[42] This completely misperceives the Commission's task. Under § 202(h) of the Act, the Commission determines whether a competitive marketplace exists. The Commission decides, in effect, whether there is a generous supply of books in the public library. It need not ascertain how often each book is checked out and read. The First Amendment and the Act instead rely on competitive market forces to determine which programmmg will attract an audience

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[38] Jonathan Levy, et al., *OPP Working Paper Series. Broadcast Television: Survivor in a Sea of Competition*, September 2002 ("Study #12").

[39] Baker Report at 21. The Baker Report fails to note that in the past decade Congress adopted the Children's Television Act, Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996, 996-1000, (codified as amended at 47 U.S.C. §§ 303a, 303b, 394), and the Commission adopted processing guidelines providing for a minimum amount of educational programming for children by every commercial television station. *Policies & Rules Concerning Children's Television Programming*, 11 FCC Rcd 10660 (1996).

[40] Baker Report at 21

[41] *See* Study #1 at Table 2

[42] Baker Report at 17.

2. Studies #2 and #7: Quality of television news.

The Baker Keport also criticizes Study #2,[43] which looked at commonly-owned newspapers' and television stations' coverage of the 2000 presidential election. The Study found commonly-owned newspapers behaved like typical "mainstream American news organizations" in the slant disclosed by their campaign coverage." It found five of the 10 newspaper-television combinations studied had similar slants and five had different slants.[45] Even those with similar slants, the study observed, could as easily have been motivated by common news judgments as by "an unseen hand of ownership control."[46] The study does not find. however, either the diversity or the quality of news coverage will be imperiled if the Newspaper Rule is repealed.

The Baker Report offers only absurd explanations of why Study #2 turned up no evidence of monolithic control of newspaper-TV combinations' coverage of the 2000 election. First, it suggests, the cops were watching. The fact the FCC might require existing cross-ownership situations to be broken up, the Report submits, kept grandfathered media owners on their best behavior.[47] This possibility has existed ever since Tribune's Chicago newspaper-broadcast combination was created in 1948, since crossownership rules were proposed in 1970, or certainly since Tribune sought a waiver of the Newspaper Rule in 1996. Yet over all that time, proponents of the Newspaper Rule point to no evidence of abuse by Tribune or anyone else. It is fair for the Commission to conclude no such evidence exists, and that repeal of the Rule would nor result in newspapers, for the first time, exercising iron control over their affiliated broadcast stations' election coverage.

Second, the Report contradicts itself in making excuses for the data. It alleges the media should not have expected to be able to influence the election in most of the states studied, because the contest in those states was not close.[48] Thus, it concludes, there was no reason to force commonly-owned outlets to march in lockstep. **A**l the same time, the Report submits TV-newspaper combinations pulled their

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[43] David Pritchard, *Viewpoint Diversity in Cross-Owned* ***Newspapers*** *and* ***Television Stations****: A Study of News Coverage of the 2000 Presidential Campaign* (FCC Media Ownership Working **Group** Report #2), September 2002 ("Study #2").

[44] *Study #2* **at 14.**

[45] Of the four Tribune-owed newspapers studied, two endorsed President Bush, one endorsed then-Vice President Gore **aitd one** issued no endorsement. Study #2 at 11

[46] Study #2 at 13.

[47] **Baker** Report at 2-3, 7.

[48] *Id.* at 7.

punches precisely because the Bush-Gore race was so close. Slanting coverage too much would risk offending whichever candidate was elected." If this were the case, one might ask why so many papers nevertheless issued endorsements at all. Baker's theoretical explanations are hollow. The study shows commonly-owned stations and papers, as often as not, cover the news from different viewpoints.

The Baker Report also takes issue with the design of Study #7.[50] This study found television stations co-owned with newspapers produce more news and public affairs programs and win more journalism awards than network affiliates that are not co-owned. The Baker Report suggests newspaper-affiliated stations may outperform their competitors because they are more mature or perhaps have always outperformed their rivals, not because they are able to draw on a co-owned newspaper's resources.[51] This, of course, is pure speculation. Either way it provides no evidence of a need to ban common ownership. The Report goes on to speculate that increased ownership concentration might lead all stations to reduce their expenditures on news coverage. Even if it were true, letting a newspaper co-own a station would provide better journalism for less expense if cost cuts were necessary.[52]

Tribune's experience is exactly to the contrary of the Baker Report's conjecture. Tnbune has initiated local news programming at nine of the television stations it has acquired in the past **20** years and has increased the amount of news presented at seven other stations, including all four that are co-located with daily newspapers."

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[49] *Id.* at 6. AFL-CIO contends the Pritchard study is flawed because it "does not compare the election coverage of combined operations with the coverage of a reference group of independent newspapers and television that are not part of a combination." Comments of AFL-CIO at 15. Of course, that **was** not its point. The Pritchard study demonstrates common ownership of a newspaper and broadcast station does not result in common viewpoints. **If** supporters of the Newspaper Rule ***were*** correct and common ownership dictated the opinions and coverage of commonly-owned media, this would have been evident in the Pritchard study. That is, regardless of how other newspapers covered an event. the Pritchard study shows commonly-owned media often had different coverage "slants."

[50] Thomas C. Spavins, et al., *The Measurement of Local* ***Television*** *News and Public Affairs Programs*, *supra* note 3.

[51] Baker Report at 8.

[52] AFL-CIO and others criticize the Spavins study by saying "the data *actually* shows there is no difference in the amount of local news aired by network owned and affiliated stations and that, in fact, networked owned stations are *less likely* to win the prestigious broadcast journalism awards than are affiliated stations." Comments of AFL-CIO at 17. Even if this were true, do these critics really suggest regulation of media should be based on the fact there is *no difference* between commonly-owned stations and others? Clearly, this is no justification for the Rule.

[53] In addition, radio station WGN, Cliicago. airs a "news/talk" format with a large full-time news staff.

These two studies present real and indisputable evidence that newspaper-affiliated broadcast stations provide superior news and public affairs coverage. They present no meaningful risk of skewed political coverage.

3. Study #3: Consumer substitution between media.

The Baker Report notes with concern the finding of Study #3[54] that there is not perfect substitution between newspapers, radio and television and the Internet." It concludes from this that if ownership concentration results in fewer news voices, consumers may be ill-informed because they may not seek out a different medium for news

The Baker Report misperceives the Commission's role: As noted earlier, it *is* not *to* spoon-feed consumers or ensure that every consumer receives a recommended daily allowance of news. Rather, the Commission wants to ensure the marketplace will provide readers, Web surfers, viewers and listeners with access to a bountiful supply of news, information and opinions. The evidence before the Commission surely demonstrates this. As long as there is ready access to these media, there is no cause for regulatory concern.[56] And there certainly is no cause for concern in allowing a broadcast station to combine its resources with those of a newspaper whose very business is gathering and disseminating news and opinion. In short, the Baker Report's concerns are wholly misplaced as they concern the Newspaper Rule."

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[54] Joel Waldfogel, *Consumer Substitution Among Media,* (FCC Media Ownership Working Group Report #3) ("Study #3")

[55] Baker Report at 10.

[56] The studies before the Commission indicate more than just access to alternate media. Consumers measured by Study #8, conducted by Nielsen Media Research, intend to increase their consumption of alternate media if a commonly-used news medium were to become unavailable. Nielsen Media Research, *Consumer Survey on Media Usage,* (FCC Media Ownership Working Group Report #8) September 2002 ("Study #8"). The Baker Report dismisses this research as measurement of mere "wishful thinking." Baker Report at 14. But government policy in many areas is determined by surveys of consumers' and business' confidence, sentiments and intentions. The Baker Report has not made a case for disregarding the Nielsen data.

[57] 'The Baker Report cites the working paper by Lisa George and Joel Waldfogel, *Does the New Yurk Times Spread Ignorance and Apathy?* (July 5, 2002) http:/lriderwharton.upenn.edu/~waldfogj/NYT_ignorance_2002.pdf, for the proposition that the availability of certain types of media may lead to unintended consequences. Baker Report at 12. The George & Waldfogel paper concludes that availability of the national edition of *The New York Times* correlates with lower voter turnout and fewer subscriptions to local daily newspapers by college-aged readers. None of the paper's conclusions militates against repeal of the Newspaper Rule. As the paper itself notes, *New York Times* subscribers who cancel [heir local newspaper subscriptions may turn to television to get their local news. George, *supra,* at 22-23. The Commission could not find a better way to enhance a local television station's coverage of

4. Study # 6: Impact of greater concentration is theoretical.

The Baker Report reserves its faint praise for Study #6,[58] which finds a theoretical basis for concluding that as ownership concentration increases, the amount of advertising also may increase." We note, first, that the study uses theoretical models. It makes predictions, rather than observations of empirical data. Second, one of the three possible outcomes yielded by the models studied is that broadcasters might *reduce* the amount of commercial time in response to consumer preferences.[60] This phenomenon has been observed recently as broadcasters struggle to hold the attention of viewers.[61] Third, neither the Baker Report nor Study #6 accounts for the dampening effect that competing video media—cable program services in particular—would have on broadcasters' inclination to increase advertising time. Considering such services now account for about half of television viewing,[62] they would exert a powerful restraining effect. Finally, while commercial loads may be a matter of general interest, the Commission has long since stopped regulating in this area except in children's programming[63] and some broadcasters' program formats (*e.g.*, home shopping) consist almost exclusively of advertising. Thus, the possibility that advertising levels may increase (under one theoretical model) if ownership concentration increases should have no influence on the Commission's judgment in this proceeding.

5. Other comments.

The Baker Report concludes by chastising the Commission for failing to study whether the media fairly cover adverse news events and whether concentration could impair the ability of advocacy groups to advertise on television because their messages might upset advertisers. These are red herrings. As *to*

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local news than to permit if to combine its resources with those of a local newspaper.

[58] Brendan Cunningham & Peter J. Alexander, *A Theory of Broadcast Media Concentration & Commercial Advertising* (FCC Media Ownership Working Group Report #6), September 2002 ("Study #6").

[59] *Id.* at I-2, 22

[60] *Id.* at 25

[61] Bill Carter, **Skipping** Ads? TV Gets Ready to Fight Back, N.Y. Times, Jan. 10, 2003; Ad-filled variety show a gamble, WB says, The Mercury News, Jan. 11, 2003.

[62] Andrew Wallenstein, *Cable claims first TV title, tops broadcast in aggregate share for '02,* Hollywood Reporter, Dec. 18, 2002; Study #12 at 22.

[63] *Revision of Programming & Commercialization Policies, Ascertainment Requirements and, Program Log Requirements for Commercial Television Stations*, 98 F.C.C.2d 1075 (1984) Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996,996-1000, (codified as amended at 47 U.S.C. §§ 303a, 303b, 394).

the first point, even if a news organization has a conflict in covering news adverse *to* it, the multitude of media voices solves this problem: There will always be an alternate medium to uncover and report the story. As to the second, consolidation should have no effect on this issue. If, as the Baker Report alleges. television stations tend to favor fast-food restaurants because they are valued advertisers, each owner is already acting in its own best interests and liberalizing the Commission's ownership rules should have no effect on this conduct. Moreover, acceptance of issue advertising is both a matter within each broadcaster's discretion under the First Amendment and one which the Commission providently stopped regulating under the Fairness Doctrine long ago.[64] It certainly is no basis for retaining the Commission's equally anachronistic ownership rules.

V. Under any standard of legal review, the Newspaper Rule must fall.

Many of the comments filed in this proceeding address the issue of the appropriate standard of legal review for the Newspaper Rule under Section 202(h) of the Telecommunications Act of 1996 (the "Act"), with those supporting the Newspaper Rule claiming it need not be ''necessary'' despite the clear statutory language to the contrary.[65] Once again, this evidences a Newspaper Rule in search of a reason. The Newspaper Rule can no longer be justified under any standard of review, both as it is and as it might be modified.[66]

A. The Newspaper Rule must be "necessary in the public interest" under the Biennial Review standard articulated in Section 202(h) of the 1996 Act.

The 1996 Act directs the Commission to review its ownership rules every two years to "determine whether any of such rules are necessary in the public interest as the result of competition," and to "repeal or modify any regulation it determines to be no longer in the public interest."" In two appellate decisions, the Court of Appeals for the District of Columbia Circuit has either vacated or

[64] *Complaint of Syracuse Peace Council against Television Station WTVH Syracuse, NY,* 2 FCC Rcd 5043 (1987)

[65] *See, e.g.*, Comments of Consumers Union et al., at 13-16, Comments of CWA at 45-48, Comments of American Women in Radio & Television at 3-4.

[66] *See also* Comments of Tribune Company, Jan 2003, at 17-28 (Newspaper Rule is unconstitutional under any level of First Amendment scrutiny)

[67] Telecommunications Act of 1996, § 202(h).

remanded ownership rules because the Commission failed to make the required showing under this Biennal Review standard.[68]

In *Fox Television*, the court stated the Biennial Review standard "carries with it a presumption in favor of repealing or modifying the ownership rules," remanded the national ownership cap to the Commission for failure to justify the rule as "necessary in the public interest," and vacated the cable-broadcast cross-ownership rule where it was unlikely the Commission would be able to justify retention of the rule on remand.[69] Chairman Powell commented that the D.C. Circuit's decision in ***Fox Television*** "compels the Commission" to "repeal these regulations unless the Commission makes an affirmative finding that the rules are necessary to serve the public interest."" This point was underscored in *Sinclair* when the court rejected the Commission's attempt to justify retention of the local television rule in the absence of definitive empirical studies. In remanding the rule, the court said, "[t]his 'wait-and-see' approach, however, cannot be squared with [the] statutory mandate . . . to 'repeal or modify' any rule that is not 'necessary in the public interest.'" These two decisions confirm the Biennial Review standard carries with it a presumption in favor of repeal absent sufficient evidence to warrant retention or reformulation of an ownership rule under review.

B. The Newspaper Rule is not "necessary in the public interest" under the Biennial Review standard articulated in Section 202(h) of the 1996 Act, and should be repealed.

The evidentiary standard that must be met in order to overcome the Biennial Review standard presumption for repeal is high. The court in ***Fox Television*** found that the Commission had not shown "a substantial enough probability" that a combined broadcast station-cable operator would discriminate against other broadcast stations in the local market "to deem reasonable a prophylactic rule as broad as

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[68] *Fox Television*, 280 F.3d 1027 (D. C. Cir. 2002); *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148 (D.C. Cir. 2002) ("*Sinclair*").

[69] *Fox Television*, 280 F.3d at 1053

[70] Testimony of Chairman Michael K. Powell before the Subcommittee on Commerce, Justice, State, and the Judiciary of the Committee on Appropriations, United States Senate, March 7, 2002.

[71] *Sinclair* 284 F.3d at 164. Judge Sentelle would have vacated the rule because the Biennial Review Standard required repeal once the court determined the Commission failed to justify the rule as necessary. *Id.* at 170-71

the cross-ownership ban."[72] The Newspaper Rule is somewhat analogous to the cable-broadcast cross ownership rule, which prohibits common ownership of cable and broadcast entities in a local market, The effect of each is similar: to promote diversity of voices by banning common ownership of two types of media in a local market." Like the cable-broadcast cross-ownership rule, the Newspaper Rule can no longer be justified in current competitive conditions. As detailed in Tribune's January 2003 Comments, the Newspaper Rule is unsupported by empirical evidence, unfairly singles out newspaper owners and prevents them from owning broadcast media and does not achieve the goals onginally underlying the Rule.''

C. The Newspaper Rule does not serve the public interest and does not achieve intended policy goals of fostering viewpoint diversity.

Some commenters, in particular United Church of Christ, et al., assert Section 202(h) requires the Commission to "review its broadcast ownership rules to evaluate if they are still needed due to the perceived increase in competition in media outlets. If the Commission finds a rule is no longer in the public interest, it should repeal or modify the rule."[73] Under this interpretation of the statutory language, the Newspaper Rule should be repealed inasmuch as it does not further the public interest goal of fostering diversity and the countervailing harms it imposes significantly outweigh any public interest benefits.

The evidentiary record in this proceeding is replete with studies and examples of the practical and positive effect of common ownership of newspapers and broadcast stations. These studies not only dispel the perceived harms of allowing such combinations, but also demonstrate the superior performance of commonly-owned entities.

Apart from the failure to achieve the goals underlying the Newspaper Rule, the harms resulting from the Newspaper Rule far outweigh potential benefits. As described in greater detail in Tribune's earlier Comments, the Newspaper Rule impermissibly discriminates against newspapers by excluding them (and not other individuals or entities) from local broadcast station ownership and denies the public

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[72] *Fox Television*, 280 F.3d at 1051

[73] *FCC v. National Citizens Comm. for Broad.*, 436 U.S. 775, 786 (1978) **("NCCB");** *Fox Television*, 280 F.3d at 1051-52.

[74] *See* Comments of Tribune Company, Jan. 2003, at 10-14

[75] *See, e.g.*, Comments of United Church of Christ, et al., at 39-23; Comments of American Women in Radio & Television, at 3.

access to superior quality news and information.[76] Tribune has repeatedly demonstrated how common ownership spurs broader local television news coverage over the air, fosters minority and alternative interest coverage in both print and broadcast media and prompts the development of local all-news cable channels such as ChicagoLand Television News." The superior newsgathering capabilities and resources of newspapers can. and in Tribune's case have, consistently brought greater quality and depth to its commonly-owned local broadcast stations.

D. The evidentiary record does not support modification of the Newspaper Rule.

The Newspaper Rule should he repealed and not replaced with another cross-ownership limit involving newspapers because studies and research do not support its revision. The weight of the evidence simply does not permit an acceptable revision or one that could meet the exacting standards of judicial review. As Tribune has demonstrated previously, neither the speculative basis for implementing the Newspaper Rule in 1975 nor the current evidentiary record supports any reformulation of the ban on newspaper ownership of local media.[78] Tribune has also pointed out that some scaled-back version of the Newspaper Rule, e.g., banning combinations in certain sized markets or where there are fewer independent media voices, is ineffective at, and incapable of, promoting diversity.[79] None of the studies in the record provide any guidance to the Commission about how to tailor a modified rule, nor do they support the proposition that a modified rule would advance the Commission's goals. Because the evidence does not support revision, and because the Newspaper Rule as it currently exists does not serve the public interest, the Commission must repeal it under any standard of review

VI. Conclusion: Total elimination of the Newspaper Rule is the only outcome justified by the record.

Of all the rules being considered in this omnibus proceeding, none is more ready for repeal, none has as extensive a record crying out for a remedy, and none has a more dubious impact on the quality and quantity of local news than the Newspaper Rule. The Commission adopted the Newspaper Rule more

[76] *See* Comments of Tribune Company, Jan. 2003, at 14-15.

[77] *See* Comments of Tribune Company, Jan. 2003, at 14; Tribune Reply Comments, 2002, at 15-16; Tribune Comments, 2001, at 44-55.

[78] *See* Comments of Tribune Company, Jan. 2003, at 23

[79] Comments of Tribune Company, 2001, at 72-77

than a quarter century ago despite an impressive and consistent record of newspaper publishers' civic-minded stewardship ofbroadcast stations. As in 1975, the facts in this proceeding support allowing newspaper publishers to own radio and television stations. Fourteen studies by the Commission and an impressive array of comments have not changed a thing: common ownership means more news and more local coverage and no facts in the record suggest commonly-owned markets practice viewpoint constriction, suppression or censorship

Since 1975, the information marketplace has exploded and diversified, and the world has changed. Spring 2003 is time for the Newspaper Rule to be repealed. Absent decisive Commission action, the courts will provide a remedy.

For the foregoing reasons, Tribune asks the Commission to eliminate the Newspaper Rule in its entirety

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